J-7 116-92

COURTS

G. R. S. IX-5]

Previous references.

File No. 3—1892

Serial Nos. 1—2

~~191~~ 1892-3

(Courts)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1—2

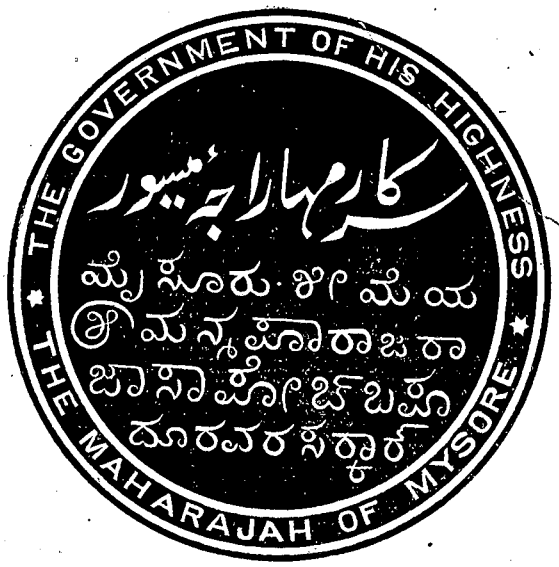
In ~~Part~~ B for Oct 1892

SUBJECT.

Memorial of Hayath Sab, a prisoner undergoing sentence in Shimoga jail to H. H. the Maharaja of Mysore

W D 88—GPB—50,000—24-7-16

Countersigned



(2)

In the Matter of a Memorial

addressed to His Highness the Maharaja by Hayatte Sab Prisoner in criminal case no: 7 of 1892 on the file of the District Magistrate of Shimoga — Criminal appeal no: 11 of 1892 on the file of the Sessions Judge Nagar Div^n and criminal Revision petition no: 40 of 1892 on the file of the Chief Court of Mysore

His Highness the Maharaja

has been pleased to pass the following

Order.

No grounds exist for any reduction of the Sentence of two years' rigorous imprisonment passed upon the Memorialist by the D^t Magr of Shimoga & Confirmed by the Sessions Judge of Nagar — This Memorial is accordingly rejected — Mysore 20 Sept 1892

by.

Mana Rajendra
Madras

I

(General Serial No. 29.)

Gen 3-1892-1

188 · 2299 · 29 AUG. 92 OFFICE OF THE DEWAN

From The Chief Secretary 4265-92 Bangalore (1)

To

The ~~Secretary to the~~ Dewan of Mysore.

Dated 24th August 1892

Despatched 27th

~~Received~~

Enclosures No five

General No. 4265 / No. 117 } 188 —8 .

Forwards for the orders of Government the accompanying memorial addressed to His Highness the Maha Rajah of Mysore by Mulme Ayath Sahib a prisoner of the Shimoga Jail.

Jud. Mrn 29/8/92

Subd for orders with ~~Home~~ usual memo

2.9.92.

Mrn 13/9.

N 4265/117 Rs. five 2

Bangalore 24½ August 1892.

(1)

From

T. R. A. Thumboo Chetty Esquire
Chief Judge of Mysore

To,

K. Shrshadri Iyer Esquire, C.I.E.
Dewan of Mysore.

Sir

I have the honor to forward for the orders of Government, the accompanying Memorial addressed to His Highness the MahaRajah by Kulme Ayath Sabi, a prisoner undergoing imprisonment in the Shimoga Jail.

The Petitioner was convicted by the District Magistrate of Shimoga of the offences of house breaking by night in order to commit theft, and theft in a dwelling house, and for being an old offender, and sentenced to rigorous imprisonment for two years and to pay a fine of Rs 100/-, in default to suffer additional rigorous imprisonment for six months.

The conviction was upheld in Appeal by the Sessions Judge, Nagar. The

prisoner's

prisoner's application to this Court for revision was also rejected. Copies of the judgments passed by the District Magistrate and the Sessions Judge, and the orders of this Court dated 4th May and 21st July 1892, are herewith sent.

I have the honor to be,
Sir,
Your most obedient Servant,

G. P. Thumbo Chetty
Chief Judge.

To

3037

24-7-92

Superintendent
Shimoga Jail

(1/a)

Translation of a petition dated 28th July 1892 presented by Hayatte sab, Prisoner No: 9441 undergoing sentence in the Shemoga jail, to the Govt of His Highness the Maharajah of Mysore, against the order, in criminal Revision petition No: 95 of 1892, by the Chief Court.

In the case brought against me one Krishnah unjustly gave false evidence. This witness has made different statements before the amildar and also in the Magistrate's Court

bourt. Similar false
evidence has been given
~~in the~~ against Hannah
who was included in the
case brought against
me. All the witnesses
that deposed against me
were arrested but were
acquitted by the 3rd Asstt
Commr and 2nd Class Ma-
-gistrate of the Eheunoga
District. Kristanah produced
a ~~...~~ to the bourt stating
that he went to commit
theft and a warrant
has been issued against
him and he has not
been found as yet and
on the evidence of such a
man I have been sentenced
to 2 years Imprisonment
and to pay a fine of Rs 100.
I pray that copies of Judg-
-ments in my case of
both the Lower and
appeal

appeal bonds as also of the brief bond and the entire records in my case may be sent for and justice done to me -

Prisoner Hayatte sab

1 No: of case	Criminal case No: 7 of 1892 on the file of the District Magistrate Shemoga, criminal appeal No: 11 of 1892 on the file of the Sessions Judge Nagar Divn and criminal Revision petition No: 40 of 1892 on the file of the Chief Court.
2 Court or Courts which tried it.	Shemoga District Magistrate's Court.
3 Nature of the sentence originally passed and confirmed or altered in appeal	Two years rigorous Imprisonment and a fine of Rs 100 in default to suffer additional rigorous Imprisonment for 6 months. Confirmed in appeal
4 Date of sentence	5th March 1892

S/

9

(1/6)

GOVERNMENT OF MYSORE

In the Court of the District Magistrate of Shimoga

This 5th day of march 1892.

Present: Abdul Rahman, District Magistrate

Criminal Case no: 7 of 1892.

Complt:
Buruda Hyath. ~~Hf~~

Accused
1. Honna
2. Kulmi Hyath
3. Appanna.

Judgment

The complaint was as follows:- That the accused committed house breaking in order to commit theft, an offence under Section 457 I.P.C.

This prosecution was at the instance of the Tirthalli Police:-

2. The following witnesses were examined for prosecution: 1. Buruda Hegaddthi, 2. Kristna, 3. Jetto, 4. Veeraraghavelu Naidu, 5. Dyava, 6. moti, 7. Tisha Hegaddthi, 8. Ramanna, 9. Ayu, 10. Krishnaji Row, 11. Lingachari, 12 Jimma, 13. Venku, 14. Bhaa-=manna, 15. Narasoji, 16. Sid Lingappa, 17. Himmanthia (examined at the instance of the Court), 18. Putti, 19. Juja Tonge and 20. Nagachary, the last three witnesses were examined at the instance of the 3 d accused.

The

The following Exhibits were filed for prosecution:-

A. Complaint Petition dated 16th January 1892 presented to the Police.

B. Complte Statement before the Police dated 20th do—

C. Police Mahazar about the production of the bugadees by Ramanna, the 8th witness } Dy 22d do—

D. Police Mahazar about the Search of the 3d accused's house Dy. 29th ——— ———

E. Police Mahazar on the production of the gold bar by the 13th witness Dy 10th Feb ———

F. Police Mahazar on the Search of the 2d accused's house Dy 21st January 1892.

G. Police Mahazar on the Search of ~~one~~ Bagu's house —— ditto ——

H. Police Mahazar on the production of ~~Ks~~ 9 by the 2d witness Dy 20th January/92

3. 3d accused stated as follows:-

"This case does not belong to my Patili. The Amildar said that this case occurred on the 17th January. I can't recollect the date ——— the Amildar came in to investigate, a day or two after, the houses of the 2d accused and Babam were searched. I have signed the two Mahazars on these searches as a Panchayatdar—

Panchayatdar. On the 24 of January, the Amildar suspended me and directed me to stay at Irthalle. I used to go home for my meals in the morning and evening and was moving about the Kachari on the night of the 28th January. Rev. Peon Hanmanta came to my house and told me that the Amildar wanted me the next morning. He was fed at the crack in the wall at the hittal. He introduced the property, ie, the Addike into the hole. No one else did this. I did not see him introduce the jewel then. The next day my house was searched. Before I could go over to the Amildar at Hirthalle, the Amildar himself came in the morning. The Rev. Peon himself pointed out the bundle there. They played this trick and entangled me into this case. I don't know whom the Addike belongs to. I know no more in this case. 1st accused lives in my elder sister's house. I am dragged in on the supposition that I might not be ignorant of what the 1st accused did. I received no stolen property."

4.

4. 3d accused Appanna was discharged under section 253 C. C. P on the 23d ~~Feb~~ last.

There was nothing direct to connect him with the case. The Addike stolen in the case was found in a crack in a wall of the 3d accused's house. It was admitted by the Panchayatdar and others that the place where the jewel was found was accessible to outsiders. Though the statement of Putti, a prostitute, examined at the instance of the 3d accused, in which she made reckless allegations against the Amildar was not at all reliable, as well as the accused's story that Rev. Piron Hanumanta introduced the jewel into the wall, and though the 3d accused's conduct in the case was exceedingly suspicious. The evidence against him was, in no way, sufficient to put him on his trial. Witnesses 19 and 21 examined, at the instance of the 3d accused, swore to having seen the Rev. Piron the night before the search of the 3d accused's house. While, on the other hand,

the

the Pros (17th witness) swore to having gone there with the Amildar on the day of the search. The two witnesses examined by the 3d accused were interested in him and their statements could scarcely be accepted as true.

5. The following charge was framed against the 1st and 2d accused.

That they, on the 17th January 1892 at Indavar, Sirhatti Taluk, committed house breaking by night in order to commit theft and theft in a dwelling house, offences punishable under secs: 457 clause II and 380 I. P. C.

6. Accused pleaded not guilty to the charge.

7. They stated as follows:-

1st accused. "I went to Azmin for bullocks on the 16th of January last and returned home 3 days after, on Wednesday evening. The Police came to search my house on the following Thursday. Nothing was found in my house. Complte: witnesses have unjustly told lies against me."

2d

2d accused. "I did not tell complainant to go out to her native place near manda-=gadde for the purpose of a vow for the benefit of her daughters health. I did not nail on copper plates at all the four corners of her house, nor did I tie up a lime to her loft. I did not commit theft in the compti's house. I repaid the loan of Rs 21 to Sid Linganna out of my own earnings at my forge. I know nothing in this case."

8. The following witnesses were examined for defence.

1. Ammusetty, 2. Komaraya, 3. Appu, 4. Manappa & 5. Kantappa.

No exhibit was filed for defence.

9. The facts of the case are these:- Compt. a widow, living with her little daughter at Indavar about a mile from Tirthalli, was advised by the 2d accused, who pro-=fessed himself to be a Soothsayer to go out to her native place some 18 miles away for the purpose of a vow for the benefit of the health of her sick daughter. Compt. accordingly left her house on Monday the 11th January last, and returned the following

Monday

Monday to learn that her house was broken into overnight and property, ie, Jewelry and cash, valued at Rs 1120, carried off: Her little daughter used to sleep at night at her grand mother's house in the village during the absence of her own mother. The house she (the daughter) left under a lock on the evening of Sunday the 17th and discovered the theft on the morning of the 18th. Compt. presented a petition (Ex A), which is wrongly dated as the 16th January, it was received by the Amildar on the 20th and he investigated the case. On the 22d the 8th witness for prosecution produced a pair of Bugadees of gold which he said were pledged with him by the 1st accused - Vide mahazar C - on the 20th January, the 2d witness for prose=cution produced Rs 9 as part of the stolen property given to him by the 1st accused. Vide mahazar H - On the 10th February, the 13th witness produced a gold bar sold to him by the 1st accused for Rs 9. Vide mahazar E.

10. 1st & 2d accused were arrested by the police on the 23d January and placed before

before this Court on the 16th February.

11. According to the deposition of the Complt., a copper vessel containing the gold ornaments were stolen from the loft in her house. One addiki, Kataui of 5 strings, Chowri Thumbu, Vali jadee, Sirapinahwoo, Kyadiji, Kamala Huvu, 2 pairs of pearl Bugadees, one pair Patti Bugadi, Hommavu one pair, goli vante a pair, 2 Nagaras. Besides an earthern pot containing cash and Jewelry as below which was buried in the ground was dug out and carried away.

~~Rs~~ 550 - 50 gid company (arcot) rupees, 2 Nanyas, 2 silver patties, 2 Vanties. Silver addege Sarapani - silver bars 2. gijje of silver, also a pair of silver pa= dagas.

12. 2d witness Krishna swore to the 1st & 2d accused breaking into the house of the Complt on the Sunday night (17th January) and carrying away cash and other pro= perty. He produced ~~Rs~~ 9 as his share

in

in the booty given to him by the 1st accused, the witness, according to his own statement, being placed to watch outside the house.

13. It would have been more proper for the Police if they had brought up the witness as an accused person, for he con= fessed the offence to them, implicated the 1st and 2d accused and produced a part of the stolen ~~money~~. This would have saved a separate prosecution against their own witness.

Any how, under the circumstances of the case, his statement as to the 1st & 2d accused breaking into the house and committing theft therein is quite reliable to my mind, though I think that the witness did not give up the whole of his share in the booty.

14. 8th witness swore to having received the bugadees identified by the compltt soon after the theft from the 1st accused though he contradicted his previous state= ment before the Police as to whether the pledge was for money due or paid then there is no question that the witness

received

received the jewels from the 1st accused.

(14)(a) 4th witness for prosecution swore to the 1st and 2nd accused and the 2nd witness Krishna having drunk arrack in his shop on the eve of the theft and 3rd witness Jethu saw the three in the 1st accused's house that night and at the field the next morning.

15. 11th & 12th witnesses (father & son) who are local goldsmiths swore to having melted down the following articles for the 1st accused soon after the theft -

Gold - Irapinahuvoo, Chowri Thumbu, Vales a pair, Kyadji - 10 small beads.

Silver - a patti - a pair of padagas, a number of damaged gejjis -

Under the circumstances of the case, it is highly probable that the articles melted down were out of the stolen property and the small gold beads were from the stolen Katanies.

16. 13th witness swore to have purchased soon after the theft the gold bar made by the 11th & 12th witnesses, his father and

brother

brother, for Rs 9 from the 1st accused

17. Though there may be some ordinary differences between these witnesses and the 1st accused as elicited in their cross examination, there is no doubt that these are old associates of the 1st accused, who according to the facts that came to light by the enquiry of this case and the other cases against him already disposed of, is a man of bad livelihood and a professional thief.

18. As for the 2d accused, there is the the clear evidence of the 16th witness Tidling-=appa, a dewakar of Tirthalli, who swore to having received the 2d accused Rs 21- on the 18th January last, in repay-=ment of his loan two years old. Though 2d accused is a workman, it is evident that he could not repay the loan for two long years and all of a sudden on the day following the theft he paid the money. There is no question that this was paid out of the stolen property.

19. Certainly, there are some minor discrepancies in the statements of the more important witnesses for prosecution, but these do not, I think, affect the substance of clear evidence against the accused. In a case of this kind and in view to the local circumstance of mainad, no better evidence could be expected. The case discloses a number of persons being associated for committing thefts in the homes of the poor and least influential people in the jungles and disposing of the stolen property with all ease and expedition.

20. The evidence in defence, to say the least of it, is worthless. 1st witness called by the 1st accused is evidently an associate of his, while the 2d witness is a relative of the 3d accused already discharged and a brother of Putti referred to in para 4 above. The witnesses examined by the 2d accused stated little or nothing in his favor.

21. I do not, therefore, hesitate in any way to convict the accused. The 2nd accused admittedly has a previous conviction still in force against him under sections 380 - 75 I. P. C, dated the 30th July 1890.

22. The conduct of the accused fully deserves an exemplary punishment under the circumstances attending.

23. The Court finds that 1st accused Honna is guilty of the offence specified in the charge, viz, that he has committed offences of house breaking by night, in order to commit theft and theft in a dwelling house, and has thereby committed offences punishable under sections 457 clause II and 380 of the I. P. C, and the Court directs that the said 1st accused Honna shall suffer rigorous imprisonment for two years and pay a fine of Rs one hundred, in default suffer additional rigorous imprisonment for six months. The Court finds that

that 2d accused Kulmi Ayath is guilty of the above offences with a previous conviction under Sections 380. 75 I. P. C. against him and the Court directs that 2d accused Kulmi Ayath shall, under secs. 457 - 380 - 75 I. P. C, suffer rigorous imprisonment for two years and pay a fine of Rs one hundred, in default suffer additional rigorous imprisonment for six months.

24. Out of the fine, if recovered, Rs one hundred shall be paid as compensation to the complainant under sec. 545 C. C. P.

25. The Bugadees before the Court and the addike to be returned to the complainant

sd/ Abdul Rahiman
District Magte

Copy
Stephens
Dy Registrar

Mkn

23

(1/c)

In the Court of Sessions, Nagar Division

Dated Shimoga the 28th March 1892.

Present: C. Cress Esqr: Sessions Judge.

Petition of Criminal appeals nos. 8 & 11 of 1892 from the Shimoga District against the conviction and Sentence by the District Magistrate under sections 457 cl: II & 380 & 75 of the Indian Penal Code in Crim: Case no: 7 of 1892.

Appellants
In appeal no. 8/1892
Honna
(1st accused)
In Appeal no: 11/1892
Kuhni Hyatha
(2d accused)

The accused were charged with house breaking by night in order to commit theft under Section 457 cl: II Indian Penal Code and theft in a dwelling under section 380 of the I. P. Code.

2. The District magistrate, finding them guilty under these sections and the 2d accused also under section 75 I. P. Code, sentenced them each to suffer rigorous imprisonment for two years and to pay a fine of Rs 100/-, in default to suffer additional rigorous imprisonment for six months.

3. The grounds of Appeal petition no: 8 of 1892 filed on the 17th March 1892 are as follow:

(1) The District magistrate erred in the appreciation

appreciation of evidence.

(2) The District Magistrate has based his decision upon uncorroborated & discrepant evidence of an accomplice.

(3) The evidence for the prosecution is full of discrepancies & improbabilities.

(4) The appellant has proved his innocence.

(5) The decision of the District Magistrate is opposed to law, facts, weight of evidence and probabilities of the case.

4. The following is a translation of the appeal petition No: 11 of 1892 filed on the 19th March 1892:-

"There is no evidence to show that I committed the offence. No property whatever was found in my house and the statement of the 2d witness Kristna is not to be believed as there are many discrepancies in it. He merely deposes as he was tutored to do by the Police who saved him from punishment. It is a fact that I paid the money, as deposed to by Sowcar Siddalingappa, 16th witness for prosecution. The presumption of the Lower Court that I did so with stolen

money

money is opposed to Law. I pray your honor to take these circumstances into consideration and order my release.

5. As both these appeals are from the same Judgment, and partly hinge upon each other, I have heard, and dis-=posed of them together.

6. I was at first disposed to think that the case against the appellants was unworthy of credit but a careful scrutiny of the evidence on the record leads me to agree with the conclusions of the Dis-=trict Magistrate. It was argued that Krishna (2d for prosecution) would not have been ill-treated by the appellants in order to force him to help them to steal, or to conceal the fact of their having done so, but this Krishna was the com-=plainant's ryot and next door neighbour, hence the appellants had to keep him quiet somehow, and they appear therefore to have treated him to attack, then beat, frightened and threatened him, and finally bribed him with 10 Rs to induce him not to betray them; the 3d witness saw the appellants

and

and Krishna together in a field, two arrack-sellers depose to these three men having come together to their shops for liquor, and three goldsmiths testify to the 1st appellant having brought them some gold ornaments to melt down. The complainant and her daughter also speak to the fact of the 2d appellant having persuaded and induced the complainant to leave her house for some days during which the burglary was committed.

7. Although there are some minor discrepancies in the evidence, yet taken as a whole, it is consistent and conclusive, and no reason is shown why so many witnesses should depose falsely against the appellants.

8. I therefore uphold the convictions and sentences and dismiss these appeals.

28th March 92

Sdl. C. Cresso
Sessions Judge
Nagar Division

mcw

Copy
Dy Registrar

27

(1/d)

In the Chief Court of Mysore at Bangalore
Wednesday the 4th day of May 1892.

Present

T. R. A. Thimboo Chetty Esquire, Chief Judge,
and
P. N. Krishna Murti Esquire, Judge.

Criminal Revision Petition No. 40 of 1892 presented by Kulmi Hyath Sabi, *2d accused in Crim: case No. 7 of 1892 on the file of the Distt. Magistrate of Shimoga. *Appellant in Criminal Appeal No. 11 of 1892 on the file of the Sessions Judge of Nagar.

Order

P. N. Krishna Murti Esqr:- The petitioner was convicted by the District Magistrate of Shimoga and the conviction was upheld by the Sessions Judge of Nagar. The Petitioner wants this Court to review the evidence. I am of opinion that this is not sufficient ground for us to interfere on the Revision side. I would reject this application.

The Chief Judge:- I am also of the same opinion

CHIEF COURT OF MYSORE

A true Copy
[signature]
Dy Registrar

mkw

28

1/2

In the Chief Court of Mysore at Bangalore

Thursday the 21st day of July 1892

Present

T. K. A. Thumboochetty Esquire, Chief Judge.

and

P. A. Krishna Murti Esquire, Judge.

Criminal Revision Petition No: 95 of 1892 presented by Kulmi Ayath Sabi, Petitioner in Criminal Revision Petition No: 40 of 1892 on the file of this Court.

Order

An application by this very prisoner was rejected by this Court - vide Criminal Revision Petition No: 40 of 1892. This Petition is also rejected.

CHIEF COURT OF MYSORE

A true Copy

Dy. Registrar

Mlu

29

(General Serial No. 30.)

1892.

643-1892
8 C 2

(3)

From

The Chief Secretary to the Dewan of Mysore.

To

The Registrar
Chief Court in
Mysore.

Dated 11 } oct 1892
Despatched 13 }

Received

Enclosures No.

General No. 3078
J. J No. 116-92

Forwarding copy of order passed by H.H. the Maharaja in the matter of prisoner Hayath Sabi's memorial.

30

No 5078 Dt 11/10/92
J.T. 116-92 13

Encl 1. (3)

To,

The Registrar of the
Chief Court of Mysore.

Sir,

I am directed to
forward herewith,
for the information
of the Judges of the
Chief Court and for
Communication to
Ayyath Dab, prisoner
in Criminal case No
7 of 1892 on the file of
the District Magistrate
Shimoga (Criminal
appeal No 11 of 1892
on the file of the Sessions
Judge Nagar Division
and Criminal Revision
Petition No 40 of 1892
on the file of the Chief
Court), copy of an
order

J Regr no 243

Orders passed by His Highness the Maharaja in the matter of the prisoner's memorial praying for ~~the~~ mitigation of the sentence passed upon him.

2. The Judgement of the Chief Court in Criminal Revision and the records of the case received with the Chief Judge's letter are herewith returned.

Please keep the enclosures read with the letter as they are being returned, as they are copies of documents in the Court of the Magistrate from whose decision the appeal was preferred.

for, Chief Secretary.